UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**CIVIL ACTION NO.** 3:03 CV 7681
vs.	:	**(Hon. David A. Katz)**
BUCKEYE EGG FARM, L.P., CROTON FARM, LLC, AND ANTON POHLMANN,	:	
Defendants.	:	

AMENDED COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against Buckeye Egg Farm, L.P., Croton Farm LLC, and Anton Pohlmann ("Defendants") to obtain injunctive relief and civil penalties for violations of Section(s) 113, 114, 165, 502 and 503 of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413, 7414, 7475, 7661a, & 7661b, including violations of 40 C.F.R. Part 52, Subpart A, Section 52.21, and the Ohio State Implementation Plan (Ohio SIP), codified at 40 C.F.R. Part 52, Subpart KK (40 C.F.R. §§ 52.1870-52.1919), which occurred and are occurring at the Defendants' commercial egg production facilities in Ohio, specifically, the Croton Facility, located in Licking County, Croton, Ohio, the Marseilles Facility, located in Wyandot County,

Harpster, Ohio, and the Mt. Victory Facility, located in Hardin County, LaRue, Ohio (collectively, "the Facilities").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1395, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the Marseilles and the Mt. Victory Facilities, two of the three facilities at which the violations alleged herein occurred, are located in the Western Division of this district.

NOTICE

4. Notice of the commencement of this action has been given to the State of Ohio and the Defendants, as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANTS

5. Defendant Buckeye Egg Farms, L.P. ("Buckeye") is a limited partnership organized under the laws of Delaware.

6. Buckeye is a continuation of the partnership originally known as AgriGeneral Company, L.P. In October 1997, AgriGeneral Company, L.P., changed its name to Buckeye Egg Farms, L.P. Based upon the terms of an October 1997 partnership agreement between Croton Farm LLC and Anton Pohlmann, Buckeye Egg Farms, L.P. is a mere continuation of, and succeeded to all of the interests and liabilities of, AgriGeneral Company, L.P.

7. Defendant Croton Farm LLC ("Croton Farm") is a limited liability corporation organized in Delaware on October 1, 1997, and in Ohio on December 29, 1997.

8. Croton Farm has a one percent ownership interest in, and is the general partner of, Buckeye Egg Farm, L.P. Croton Farm LLC has two members: Anton Pohlmann and Poultry Investors Group, Inc. Poultry Investors Group, Inc. is an Ohio corporation and Anton Pohlmann is its sole shareholder.

9. As the general partner of Buckeye, Croton Farm is responsible for the activities of Buckeye and all liabilities arising from those activities, including all liabilities and violations alleged in this Complaint.

10. Defendant Anton Pohlmann is a citizen of the Federal Republic of Germany .

11. Defendant Anton Pohlmann has a ninety-nine percent ownership interest in, and is the limited partner of, Buckeye Egg Farm, L.P.

12. Defendant Anton Pohlmann is one of two members of Croton Farm LLC, and is the sole shareholder of Poultry Investors Group, Inc., the other member.

13. Anton Pohlmann owns the property and buildings utilized by Buckeye for the commercial production of eggs at its Ohio Facilities.

14. Anton Pohlmann leases these properties and buildings to Buckeye.

15. Anton Pohlmann, by virtue of his ninety-nine percent ownership interest in Buckeye, his complete control of the general partner, Croton Farm and it other member Poultry Investors Group, Inc., his ownership of the buildings and property operated by Buckeye, and his control over the interrelated finances of all the Defendants, exercises control over, or has the ability to control, the business decisions and operations of Buckeye. Anton Pohlmann's control over Buckeye is so complete that it is inconsistent with his nominal role as a limited partner, and he is, in fact, the alter-ego of Buckeye.

16. Anton Pohlmann, by virtue of his position as sole member of Croton Farm, his ownership of the land and buildings operated by Buckeye, and his control over the interrelated finances all the Defendants, exercises control over, or has the ability to control, the business decisions and operations of Croton Farm. Anton Pohlmann's control over Croton Farm is so complete that he is, in fact, the alter-ego of Croton Farm.

17. By virtue of Anton Pohlmann's positions with Buckeye and Croton Farm and Poultry Investors Group, Inc., his control of the inter-related finances of the Defendants, and his control over the operations of both Buckeye and Croton Farm, Anton Pohlmann is personally and individually liable for the violations of law of Buckeye and Croton Farm as alleged in this Complaint.

18. Defendants own and/or operate the Facilities, or have owned and/or operated the Facilities that are the subject of this Complaint.

19. Each Defendant is a "person" as defined in Section 302(e) of the CAA and applicable federal and state regulations promulgated pursuant to the CAA.

20. Each of the Facilities emit particulate matter ("PM") from fans, vents and openings in each building. PM is a criteria air pollutant.

STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration Requirements

21. Section 165 of CAA, 42 U.S.C. 7475, and applicable implementing regulations prohibit the construction or modification of a major emitting facility in an attainment area unless a permit has been issued and the facility is subject to the best available control technology for each pollutant subject to regulation under the CAA that is emitted or which results from such facility.

22. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a prevention of significant deterioration ("PSD") permit has been issued. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year ("TPY") or more of any air pollutant.

23. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

24. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the CAA. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for PM, 25 tons per year; and for particulate matter of ten microns or less ("PM_{10}"), 15 tons per year, (hereinafter "criteria pollutants").

25. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant quantities.

26. Section 161 of the CAA, 42 U.S.C. § 7471, requires state implementation plans to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

27. A state may comply with Section 161 of the CAA either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

28. Pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410(a), the Administrator determined the Ohio SIP did not satisfy the measures required to ensure the prevention of significant deterioration of air quality. As a result, the Administrator disapproved the PSD portion of the Ohio SIP, 40 C.F.R. § 52.1884(a).

29. In accordance with Section 110(c) of the CAA, 42 U.S.C. § 7410(c) and 40 C.F.R. § 52.21(a), the Administrator incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) (PSD Regulations) as part of the Ohio SIP, 40 C.F.R. § 52.1884(b), effective January 29, 1981.

30. EPA conditionally approved Ohio's PSD regulations on October 10, 2001. 66 Fed. Reg. 51570. EPA granted final approval of Ohio's PSD regulations OAC sections 3745-31-11 to 3745-31-20, as well as changes to portions of the provisions pertaining to both attainment and nonattainment areas in OAC sections 3745-31-01 to 3745-31-10 on January 22, 2003, effective March 10, 2003. 68 Fed. Reg. 2909. These regulations have been codified at 40 C.F.R. Part 52, Subpart KK (40 C.F.R. §§ 52.1870-52.1919).

31. Under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties not to exceed $25,000 per day of violation for

violations of the CAA. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

Title V Permits

32. Section 502 of the CAA, 42 U.S.C. § 7661a, states that it is unlawful for any person to operate an affected source, a major source, or any other source, except in compliance with a permit issued by a permitting authority under Title V after the effective date of any permit program approved or promulgated under Title V of the CAA, 42 U.S.C. §§ 7661 - 7661f.

33. Section 503(a) of the CAA, states that any source specified in section 502 shall become subject to a permit program, and is required to have a permit. In addition, Section 503(c) states that any person required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit.

34. 40 C.F.R. Part 70, Appendix A. 40 C.F.R. 70.5(a)(1) states that the owner or operator of a source must apply for a Title V permit within 12 months after the source becomes subject to the permit program. EPA published the final approval of the State of Ohio's operating permits program in the Federal Register (60 Fed. Reg. 42045) on August 15, 1995. The final approval became effective October 1, 1995. Therefore, Buckeye should have submitted its Title V permit applications for each facility by October 1, 1996.

35. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties not to exceed $25,000 per day of violation for violations of the CAA. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

Testing Requirements Under Sections 113 and 114

36. Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), EPA may require a person who owns or operates an emission source to, among other things, sample emissions in accordance with procedures or methods as prescribed by EPA, and submit reports of any such sampling or testing.

37. Section 113(a)(3) provides that EPA may issue an order to a person who has violated a requirement of Subchapter I of the CAA, including Section 114 of the CAA, to require that such person comply with the requirements of Subchapter I.

38. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997, for violations of the CAA, including violations of any record-keeping, inspection, or monitoring requirements imposed pursuant to Section 114(a) of the CAA, and violations of an order issued under Section 113(a)(3) of the CAA..

FIRST CLAIM FOR RELIEF
(Failure to Obtain a PSD Permit -Croton Facility)

39. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 38, above.

40. At all times since 1980, the Croton Facility was located in an area that had been classified as attainment or unclassifiable for total suspended particulate and/or PM_{10}.

41. The Croton Facility is a major source subject to the requirements of the Ohio SIP, 40 C.F.R. § 52.21. These requirements are applicable because the pollutant-emitting activities from the Croton Facility has the potential to emit 250 TPY or more of PM.

42. On or around December 4, 1980, Defendants began construction of the Croton Facility, which is a major source with the potential to emit 250 TPY or more of PM, without PSD permits, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

43. On or around December 4, 1980, the State of Ohio issued a permit to install ("PTI") to Defendants to construct the Croton Facility. Defendants constructed a major source with the potential to emit 250 TPY or more of PM.

44. On at least three occasions between 1982 and 1986, Defendants expanded the Croton Facility by making three major modifications, each of which resulted in a significant net emissions increase of 25 TPY or more of PM.

45. For the December 1980 construction of a major source with the potential to emit 250 TPY or more of PM, and for each of the three major modifications that occurred at the Croton Facility between 1982 and 1986, Defendants failed to obtain a PSD permit, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

46. For the December 1980 construction of a major source with the potential to emit 250 TPY or more of PM, and for each of the three major modifications that occurred at the Croton Facility between 1982 and 1986, Defendants failed to employ BACT at the Croton Facility, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

47. Each of these violations commenced on the date of start of construction and/or modification, and continues until Defendants obtain the appropriate PSD permit and install and

operate the necessary pollution control equipment to satisfy the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

48. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

49. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

50. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

51. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

52. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

SECOND CLAIM FOR RELIEF
(Failure to Obtain a PSD Permit -Marseilles Facility)

53. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 52, above.

54. At all times since 1996, the Marseilles Facility was located in an area that had been classified as unclassifiable for PM_{10}.

55. On or around March 7, 1996, Defendants began constructing the Marseilles Facility, which resulted in emissions of 250 TPY or more of PM, without a PSD permit, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

56. Beginning on or around October 19, 1998, Defendants made a major modification to the Marseilles Facility which resulted in a significant net emissions increase of 25 TPY or more of PM.

57. As part of its construction and modification of the Marseilles Facility, Defendants failed to apply BACT for PM, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

58. Each of these violations commenced at the date of construction and/or modification, and continues until Defendants receive an appropriate PSD permit and install and operate the necessary pollution control equipment to satisfy the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

59. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

60. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

61. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

62. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

63. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

THIRD CLAIM FOR RELIEF
(Failure to Obtain a PSD Permit Mt. Victory Facility)

64. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 62, above.

65. At all times since 1994, the Mt. Victory Facility was located in an area that had been classified as unclassifiable for PM_{10}.

66. On or around May 9, 1994, Defendants began constructing the Mt. Victory Facility, which resulted in emissions of 250 TPY or more of PM, without a PSD permit, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

67. As part of its construction of the Mt. Victory Facility, Defendants failed to apply BACT for PM, violating the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK

68. Each of these violations commenced on the date of construction and/or modification, and continues until Defendants receive an appropriate PSD permit and install and operate the necessary pollution control equipment to satisfy the Ohio SIP requirements at 40 C.F.R. Part 52, Subpart KK.

69. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

70. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

71. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

72. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

73. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

FOURTH CLAIM FOR RELIEF
(Failure to Obtain a Title V Permit - Croton Facility)

74. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 73, above.

75. The Croton Facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined at Section 501(2) of the CAA) with the potential to emit more than 100 tons per year of PM_{10}.

76. Defendants failed to apply for or obtain a Title V operating permit for the Croton Facility, violating Section 503 of the CAA.

77. These violations commenced on October 1, 1996, at the Croton Facility and continue until the appropriate Title V permits are obtained.

78. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

79. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

80. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

81. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

82. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

FIFTH CLAIM FOR RELIEF
(Failure to Obtain a Title V Permit - Marseilles Facility)

83. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 82, above.

84. The Marseilles Facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined at Section 501(2) of the CAA) with the potential to emit more than 100 TPY or more of PM_{10}.

85. Defendants failed to apply for or obtain a Title V operating permits for the Marseilles Facility, violating Section 503 of the CAA.

86. These violations commenced on October 1, 1996 at the Marseilles Facility, and continue until the appropriate Title V permits are obtained.

87. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

88. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

89. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

90. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

91. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

SIXTH CLAIM FOR RELIEF
(Failure to Obtain a Title V Permit - Mt. Victory Facility)

92. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 91, above.

93. The Mt. Victory Facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined at Section 501(2) of the CAA) with the potential to emit more than 100 TPY or more of PM_{10}.

94. Defendants failed to apply for or obtain a Title V operating permits for the Mt. Victory Facility, violating Section 503 of the CAA.

95. These violations commenced on October 1, 1996 at the Mt. Victory Facility, and continue until the appropriate Title V permits are obtained.

96. Each day on which the acts or omissions referred to in the preceding Paragraph occurred or continue to occur is a separate violation of the CAA.

97. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Ohio SIP.

98. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Ohio SIP.

99. Unless restrained by an Order of the Court, Defendants may continue to violate the CAA.

100. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Defendants are liable for injunctive relief and (1) a civil penalty of up to $25,000 per day of violation occurring prior January 30, 1997, and (2) a civil penalty of up to $27,500 per day of violation occurring on or after January 30, 1997.

SEVENTH CLAIM FOR RELIEF
(Failure to Complete Emissions Testing Under Section 114)

101. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 100, above.

102. The recordkeeping, inspection, monitoring, and entry requirements contained in Section 114 of the CAA, 42 U.S.C. § 7414 provide, among other things, that:

> For the purpose of... (ii) determining whether any person is in violation of any such [regulatory] standard or [state implementation] plan - the Administrator may require any person who ... owns or operates any emission source or who is subject to any requirement of this subchapter... to (D) sample such emissions (in

accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe).

42 U.S.C. § 7414(a)(1)(D).

103. The purpose of the information gathering provision in the CAA is to provide the Administrator a means by which EPA can monitor compliance with the CAA.

104. Information gathering is typically pursued through an information request letter, or an emissions sampling order, from EPA, issued pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 ("Section 114 Request").

105. Pursuant to Section 113 of the CAA, when any person fails to conduct emissions sampling requested by EPA pursuant to Section 114 of the CAA, EPA may commence a civil action for a permanent or temporary injunction and/or to assess and recover a civil penalty. 42 U.S.C. § 7413(b)(2).

106. Defendants own and/or operate "emission sources" within the meaning of Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), and are subject to the requirements of Section 114(a)(1).

107. On January 19, 2001, pursuant to its authority under Section 114 of the CAA, 42 U.S.C. § 7414, EPA issued a Section 114 Request to Buckeye, requiring it to conduct emissions testing at its Croton, Marseilles and Mt. Victory facilities.

108. EPA's Section 114 Request was issued in accordance with law and was not arbitrary or capricious or an abuse of discretion.

109. Buckeye conducted a portion of the required emission testing at its Marseilles facility June 4-8, 2001, and subsequently submitted a copy of the emission test report. The testing results, using ventilation rates measured by EPA and Buckeye during testing, indicate PM emissions from the Marseilles Facility of approximately 703 tons per year as a low estimate. The

Croton Facility has four times as many barns as the Marseilles Facility. Size distribution analysis conducted as part of the emission testing indicates that emissions of particulate matter finer than PM10 (particulate matter less than 10 microns) is about 112 tons per year from the Marseilles facility.

110. On February 19, 2002, EPA contacted Buckeye to discuss the additional testing required by the Section 114 Request.

111. In a letter dated March 5, 2002, Buckeye refused to perform any testing beyond the June, 2001, testing conducted at the Marseilles Facility.

112. Buckeye failed to complete the required testing at its various Facilities.

113. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Section 114 Request.

114. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, Anton Pohlmann is personally liable for Buckeye's refusal to comply with the Section 114 Request.

115. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to commence a civil action to assess and recover a civil penalty against any person "Whenever such person has violated, or is in violation of, any other requirement of prohibition of this subchapter. ..." 42 U.S.C. § 7414(b)(2).

116. Defendants failed to comply with the requirements of Section 114 of the CAA, 42 U.S.C. § 7414, as described above, in that Defendants failed to provide a sampling protocol and refused to conduct the emissions sampling requested by EPA.

117. Defendants' failure to provide the sampling protocol and conduct the emissions sampling requested by EPA violates Section 114 of the CAA, 42 U.S.C. § 7414, and, pursuant to

Section 113(b) of the CAA, 42 U.S.C. § 7413(b), subjects Defendants to injunctive relief and a civil penalty not to exceed $27,500 per day for each violation pursuant to Section 113(b) of the CAA, as amended by Pub. L. 104-134 and 61 Fed. Reg. 69360.

EIGHTH CLAIM FOR RELIEF
(Violation of Administrative Order Requiring Emissions Testing)

118. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 117, above.

119. Section 113(a)(3) provides that EPA may issue an order to a person who has violated a requirement of Subchapter I of the CAA (Section 7401 through 7515), including Section 114 of the CAA, 42 U.S.C. § 7414, to require that such person comply with the requirements of Subchapter I.

120. Following Defendants' refusal to comply with the Section 114 Request to conduct emissions testing, on October 10, 2002, the Acting Director of the Air and Radiation Division for EPA Region 5 issued a unilateral administrative order, pursuant to Section 113(a)(3) of the CAA ("Section 113 Order"), requiring Buckeye to comply with the Section 114 Request outstanding requirement for additional emissions testing at the Facilities.

121. EPA's Section 113 Order was issued in accordance with law and was not arbitrary or capricious or an abuse of discretion.

122. Buckeye failed to comply with the requirements of Section 113 of the CAA, 42 U.S.C. § 7414, as described above, in that Buckeye failed to comply with the Section 113 Order to conduct the emissions testing in accordance with the protocol included in the Section 113 Order, and to submit a report summarizing the test results as required by EPA.

123. Croton Farm, as the general partner of Buckeye, is liable for Buckeye's failure to comply with the Section 113 Order.

124. By virtue of Anton Pohlmann's complete control over Croton Farm, the general partner of Buckeye, and over Buckeye itself, he is personally liable for Buckeye's failure to comply with the Section 113 Order.

125. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to commence a civil action to assess and recover a civil penalty against any person "Whenever such person has violated, or is in violation of, any other requirement of prohibition of this subchapter. ..." 42 U.S.C. § 7414(b)(2).

126. Defendants' failure to conduct the emissions testing in accordance with the protocol included with the Section 113 Order, and submit a report summarizing the test results as required by EPA, violates Section 113 of the CAA, 42 U.S.C. § 7413, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), subjects Defendants to injunctive relief and a civil penalty not to exceed $27,500 per day for each violation pursuant to Section 113(b) of the CAA, as amended by Pub. L. 104-134 and 61 Fed. Reg. 69360.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order Defendants to comply with the CAA and its implementing federal and state regulations and permits;

2. Assess civil penalties against Defendants for up to the amounts provided in the applicable statutes; and

3. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

By: _____
DEBORAH M. REYHER
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
Washington, DC
(202) 514-4113

Gregory A. White
United States Attorney
Northern District of Ohio

By: _____

Robert G. Young
Assistant United States Attorney
Four Seagate, Suite 308
Toledo, Ohio 43604

OF COUNSEL:

MYRON ENG

MARY T. McAULIFFE
Associate Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604